

ADOT JPA File No.: 04-077  
**Amendment No. One (1)**  
AG Contract No.: KR05-0017TRN  
Project: East Flagstaff TI  
TRACS No.: H5106 01C  
Budget Source Item No.: 18106

**AMENDMENT NO. ONE (1)  
TO  
INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF FLAGSTAFF

**THIS AMENDED AGREEMENT** is entered into this date of April 13th, 2007  
**Amendment No. One** to JPA No. 04-077, A.G. Contract No.: KR05-0017TRN, filed with the Secretary of  
State under No. 27618, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended,  
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION  
(the "State") and the CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the  
"City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

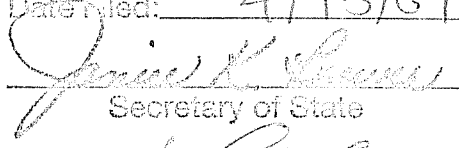

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

**THE PURPOSE OF THIS AMENDMENT:** To clarify and finalize the City and State's funding obligation related to this Agreement.

Due to the escalation of construction costs and relocation of utility lines, the City of Flagstaff has chosen to use exchange Federal STP Funds referenced in JPA 05-036 and apply to Project Agreement JPA 04-077 Amendment-One. The following paragraphs shall be deleted and replaced in full.

Section I.6.of the Recitals  
Section II.1.d and II.2.a.of the Scope of Work  
Section III.1. Miscellaneous Provision.

Both parties agree the City's portion of the Project costs shall not exceed **\$1,900,762.00**.

NO. 27618  
Filed with the Secretary of State  
Date Filed: 4/13/07  
  
Secretary of State  
By: 

**Section 1.6. is deleted and replaced in full as follows:**

The work embraced in this Agreement is for the design, construction and maintenance of a multi-use trail, landscaping and under crossings at State Route (SR) 66 and US 89 and a culvert crossing near Lynch Road. In addition to the enhancements a fourth leg at Cummings Road (Mall Entrance) will be constructed, herein after referred to as the "Project". Both parties agree that due to the escalation of construction costs and the relocation of City's utility lines, the City's total Project costs shall not exceed the amount of **\$1,900,762.00**. This amount includes City's design, City's construction portion and City's share for the relocation of utility lines. This is derived as follows:

ITEM	<u>DESIGN (8%)*</u>	<u>CONSTRUCTION</u>	<u>TOTAL</u>
1. Trail	\$12,616	\$272,030	\$284,646
2. Landscaping	\$31,610	\$1,417,000	\$1,448,610
3. Trail Crossings	\$57,488	\$867,295.50	\$924,783.50
4. Mall Entrance		\$63,555	\$63,555
4. Utility Relocation		\$479,167.50	\$479,167.50
<b>SUBTOTAL ITEMS 1 - 5</b>	<b>\$101,714</b>	<b>\$3,099,048</b>	<b>\$3,200,762</b>
PROJECT OF OPPORTUNITY FUNDING			(\$600,000)
ADOT DISTRICT MINOR FUNDING			(\$200,000)
TEA-21LOCAL STP FUNDING			<u>(\$500,000)</u>
<b>CITY OF FLAGSTAFF TOTAL</b>			<b>\$1,900,762</b>

\* Unchanged from Exhibit A JPA 04-077

The Federal Exchange STP Funds from JPA 05-036 shall be applied to JPA 04-077 Amendment-One. The City's matched funds for the exchanged STP, funding is listed below.

Exchange STP funds @ 94.3% (JPA 05-036) (capped)	<u>\$1,297,600.00</u>
<b>Total 94.3%</b>	<b>\$1,297,600.00</b>
City's match STP fund @ 5.7% (capped)	<u>\$ 78,434.00</u>
<b>Total 5.7%</b>	<b>\$ 78,434.00</b>
City's total Project Costs	\$1,900,762.00
City's total match funds 5.7%	+ <u>\$ 78,434.00</u>
<b>Total Amount</b>	<b>\$1,979,196.00</b>
City's total project costs & City's match funds 5.7%	\$1,979,196.00
Total of Exchange STP	-\$1,297,600.00
<b>City's Balance Due</b>	<b>\$ 681,596.00</b>

**THEREFORE**, in consideration of the mutual covenants expressed herein, this Agreement is amended as follows:

**II. SCOPE OF WORK**

1. The State shall:

**Section II.1. Paragraph d. is deleted and replaced in full as follows:**

d. On behalf of the City, the State shall enter into a Project Agreement with FHWA covering the work embraced in said construction contract and request the maximum authorized Federal Funds available, including construction engineering and administration costs.

2. The City shall:

**Section II.2. Paragraph a. is deleted and replaced in full as follows:**

a. Upon execution of this Agreement, designate the State as authorized agent for the City. The City shall deposit with the State in the amount of **\$681,596.00**. The City will not be responsible for additional costs exceeding **\$1,900,762.00**, and the City is not entitled to any adjustments should project costs decrease from the stated amount above.

**III. MISCELLANEOUS PROVISIONS****Paragraph 1. is deleted and replaced in full as follows:**

1. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify the State, from loss of any of its departments, agencies, officers or employees from any and all costs and/or damages incurred by any of the above and from any other damage to any person or property whatsoever, that is caused by any activity, condition or event arising out of the performance, nonperformance or negligent performance of any provisions of this Agreement by the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include any action, court costs, and expenses of litigation or attorneys' fees.

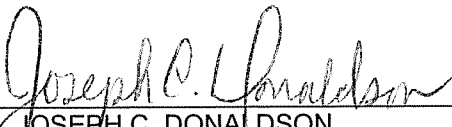
**EXCEPT AS AMENDED** herein, **ALL OTHER** terms and conditions of the original Agreement remain in full force and effect.

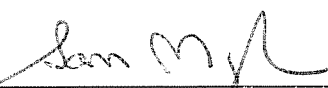
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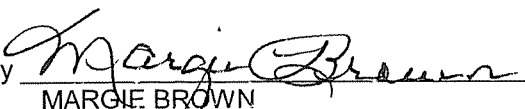
**IN WITNESS WHEREOF**, the parties have executed this Amended Agreement the day and year first above written.

**CITY OF FLAGSTAFF****STATE OF ARIZONA**

Department of Transportation

By   
JOSEPH C. DONALDSON  
Mayor  
ATTEST:

By   
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

By   
MARGIE BROWN  
Clerk

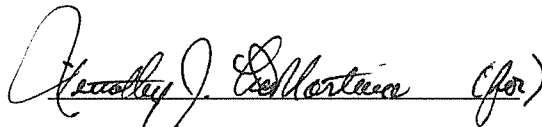
G:04-077-Amendment One Flagstaff T1  
Revised August 28, 2006-ly  
Revised October 3, 2006  
Revised October 18, 2006  
Revised February 1, 2007-district-ly  
Revised February 12, 2007-district-ly  
Final February 20, 2007-ly

JPA 04-077

APPROVAL OF THE CITY OF FLAGSTAFF

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF FLAGSTAFF, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 22nd day of March, 2007.

  
City Attorney



TERRY GODDARD  
Attorney General

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
Writer's Direct Line:  
602.542.8855  
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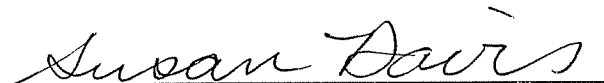
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0017TRN (**JPA 04-077, Amendment No. One**), an Agreement between public agencies, i.e., The State of Arizona and The City of Flagstaff, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 9, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:1007909  
Attachment